REMARKS

Claims 4, 16, 20, 27-54 and 57-60 are pending in the present application. Claims 27-54 are withdrawn from consideration as being directed to non-elected inventions. Claims 16, 59 and 60 are canceled herein without prejudice or disclaimer. Claim 4 is amended herein for clarity to more particularly define the invention. In addition, withdrawn claims 27, 31, 35, 39 and 46 through 49 are amended herein to place them in condition for rejoinder upon allowance of the product claims. Support for these amendments is found in the language of the original claims and throughout the specification at least for example on page 11, line 24 through page 12, line 12, on page 52, lines 11-28, and on page 114, lines 1-13. No new matter is believed to be added by these amendments and their entry and consideration are respectfully requested. In light of these amendments and the following remarks, applicants respectfully request reconsideration of this application and allowance of the pending claims to issue.

I. Interview Summary

Applicants wish to thank Examiner Burkhart and Examiner Woitach for granting the request for and participating in the telephonic interview held on December 11, 2008 with applicants' representative, Dr. Alice M. Bonnen. During the interview the remaining written description and enablement rejections were discussed.

II. Rejections under 35 U.S.C. §112, first paragraph, written description and enablement.

The Action states that claims 4, 16, 20, 59 and 60 stand rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the written description requirement. In addition, the Action states that claims 4, 16, 20, 59 and 60 stand rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to reasonably provide enablement for any other CATERPILLAR 11.3 polypeptide or any functional fragment of a CATERPILLAR 11.3 polypeptide other than the polypeptide of SEQ ID NO:18 or amino acids 1-921 of SEQ ID NO:20.

As noted above, claims 16, 59 and 60 are canceled herein without prejudice. Therefore, the rejection as it pertains to these claims is moot.

The Office Action states that the rejections are maintained for the reasons of record. The previous Office Action dated December 31, 2008 states that the instant specification is inadequate to describe and enable how to make the nucleic acids as broadly as they are claimed. In the interview, Examiner Burkhart specifically stated that 95% sequence similarity as recited in claim 4, part (b), was too high. Applicants respectfully disagree. However, in order to expedite prosecution of the present application, claim 4 is amended herein as follows without disclaimer of the right to file a continuation application to pursue the subject matter of claim 4 prior to amendment. Accordingly, as amended herein claim 4 recites an isolated nucleic acid encoding a CATERPILLER 11.3 polypeptide, said isolated nucleic acid comprising a nucleotide sequence selected from the group consisting of: (a) the nucleotide sequence of SEQ ID NO:17 or SEQ ID NO:19; (b) a nucleotide sequence that differs from the nucleotide sequences of (a) above due to the degeneracy of the genetic code. Accordingly, claim 4 no longer recites a nucleotide sequence having at least 95% sequence similarity to SEQ ID NO:19.

Furthermore, withdrawn claims 27, 31, 35, 39 and 46 through 49 are amended herein to recite that the CATERPILLER 11.3 polypeptide activity that is detected is the inhibition of Myd88-induced NF-κB induction and the NIK induced NF-κB induction activity. Both Myd88 and NIK are considered to be important signaling molecules in the inflammatory pathway. Specifically, MyD88 is an important adapter protein that links members of the toll-like receptor (TLR) and interleukin-1 receptor (IL-1R) superfamily to the downstream activation of nuclear factor-κB and mitogen-activated protein kinases. Thus, the data showing that the CATERPILLER 11.3 polypeptide inhibits the function of these molecules clearly shows that the CATERPILLER 11.3 polypeptide functions as an inhibitory molecule in the inflammatory signaling pathways leading to activation of NF-κB (Specification, page 114, lines 1-13).

Accordingly, applicants have amended the claims of the present application to clarify and further define the nucleotide and polypeptide sequences of the invention. Thus, in view of the amendments presented herein applicants submit that claims of the present invention comply with

both the written description and enablement requirements and respectfully request withdrawal of the rejection.

III. Rejoinder of method claims

Claims 27, 31, 35, 39 and 46 through 49 as presented herein include all of the recitations of product claim 4. Thus, if it is determined that claim 4 is allowable, applicants request review and examination of these method claims in the present application, pursuant to the practice of rejoinder as set forth in section 821.04 of the MPEP. In particular, it is stated therein that if a product claim is elected in a restriction and then found allowable, withdrawn process claims that depend from or otherwise include all of the limitations of the allowable product claim are to be rejoined in the same application.

The points and concerns raised in the Action having been addressed in full herein, it is respectfully submitted that this application is in condition for allowance, which action is respectfully requested. Should there be any remaining concerns, the Examiner is encouraged to contact the undersigned attorney by telephone to expedite the prosecution of this application.

No fee is believed due. However, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,

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CERTIFICATION OF ELECTRONIC TRANSMISSION
I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on December 23, 2008.

Claire Wimberly